

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4927 of 2015 (O&M)
Date of Decision: 18.03.2016

Shree Balaji Chemicals Safidon and others

..Appellants

versus

Baldev Raj Giridhar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.

Present : Mr. S.K.Garg Narwana, Sr. Advocate with
Mr. Karan Garg, Advocate, for the appellants.

Mr. Arun Bansal, Advocate, for the respondents.

S.J.VAZIFDAR A.C.J. (Oral)

This is an appeal against the judgment and order of the learned Additional Sessions Judge, Jind restraining the appellant i.e. the original defendant from infringing the registered trademark “Girdhar Khadi” by using the word “Khadi” as a trademark with any prefix and suffix or any phonetically or visually similar trademark as that of the respondents i.e. the original plaintiffs’ registered trademark “Girdhar Khadi” by any deceptive variations of these trademarks.

2. The respondents i.e. the plaintiffs are the registered proprietors of the word mark “Girdhar Khadi”. The application for registration was advertised before acceptance in class-30 with disclaimer to the effect that “the applicant has no exclusive right for the word ‘Khadi’ ”. The plaint did not even disclose the fact of the disclaimer. The registration certificate itself has not been produced. It is reasonable to presume that the registration certificate also contains the same disclaimer. Indeed it would be difficult to imagine the Registrar not insisting upon the disclaimer in respect of a word

such as “Khadi”. Further, what is registered is the word mark and not a device mark. This itself was sufficient for the learned Judge to have rejected the application for injunction.

3. The learned Judge, however, rightly did not grant an injunction as regards the prefix “Girdhar”. There is clearly no visual or phonetic similarity between the marks/words “Girdhar” and “Garg” or the marks/words “Girdhar Khadi” and “Garg Khadi”. There is no possibility of confusion or deception.

4. The art work has not been produced before me as it ought to have. In any event this is not an action of infringement of copyright. If the respondents file an action for infringement of copyright, that would be decided on its own merits.

5. The appeal is accordingly allowed. The impugned judgment and order of the learned Additional District Judge, Jind is quashed and set-aside. There shall, however, be no order as to costs.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

18.03.2016
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